STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of DEANGELO DEWAYNE LANDFAIR, Minor.

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellee,

v

DEANGELO DEWAYNE LANDFAIR,

Respondent-Appellant.

UNPUBLISHED
April 22, 2010

No. 289942
Wayne Circuit Court
Juvenile Division
LC No. 05-447762-DL

Before: JANSEN, P.J., AND CAVANAGH AND K. F. KELLY

PER CURIAM.

Respondent, a juvenile, appeals as of right from the trial court's dispositional order following his plea of admission to fourth-degree criminal sexual conduct, MCL 750.520e(1)(a). We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

I. PLEA WITHDRAWAL

Respondent argues that the trial court erred by accepting his plea of admission for several reasons. Because respondent did not move to withdraw his plea in the trial court pursuant to MCR 3.941(D), or move for rehearing pursuant to MCR 3.992, this issue is not preserved. Therefore, we review this unpreserved claim for plain error affecting respondent's substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). Generally, a trial court may accept a juvenile respondent's plea of admission if it is satisfied that the plea is understanding, voluntary, and accurate. MCR 3.941(A). A plea is understandingly made if the respondent is advised of and understands the rights set forth in MCR 3.941(C)(1). The plea is voluntary if the terms of any plea agreement are disclosed and the plea is the respondent's own choice, meaning it is not tendered under threat or duress. MCR 3.941(C)(2). The plea is accurate if there is "support for a finding that the juvenile committed the offense." MCR 3.941(C)(3). In the absence of a procedural error in receiving the plea, a respondent must establish a fair and just reason for withdrawal of the plea. *People v Harris*, 224 Mich App 130, 131; 568 NW2d 149 (1997).

Respondent first contends that he was not competent to tender a plea and comply with the necessary requirements of the treatment program because of mental health issues. We disagree. Mental Health Code provisions regarding competency applicable to criminal defendants "provide a useful guide to trial courts" for the adjudication of competency determinations in juvenile cases. See *In re Carey*, 241 Mich App 222, 233-234; 615 NW2d 742 (2000). A criminal defendant must be competent to tender a plea. *People v Whyte*, 165 Mich App 409, 411; 418 NW2d 484 (1988). "The conviction of an individual when legally incompetent violates due process of law." *In re Carey*, 241 Mich App at 227. "[A] defendant is presumed competent to stand trial unless his mental condition prevents him from understanding the nature and object of the proceedings against him or the court determines he is unable to assist in his defense." *People v Mette*, 243 Mich App 318, 331; 621 NW2d 713 (2000). Where a defendant does not raise the issue, "the trial court ha[s] no duty to *sua sponte* order a competency hearing," *People v Inman*, 54 Mich App 5, 12; 220 NW2d 165 (1974), unless facts are brought to the trial court's "attention which raise a 'bona fide doubt' as to the defendant's competence." *People v Harris*, 185 Mich App 100, 102; 460 NW2d 239 (1990).

Here, there is nothing in the record to suggest that respondent was incompetent to tender a plea. Respondent did not assert any lack of comprehension during the proceedings and he answered questions in an appropriate manner. The information placed on the record indicated that respondent was a troubled youth with a history of sexual abuse. He was evaluated by the Clinic for Child Study and was diagnosed with Attention Deficit Hyperactivity Disorder (ADHD), impulse control disorder, and post-traumatic stress disorder; he was later placed on medication for ADHD. He was also found to have some developmental delay. However, respondent's circumstances, standing alone, did not indicate that his mental condition was such that he was unable to understand the nature and object of the proceedings against him and his statements to the court showed a sufficient level of comprehension. Consequently, respondent has failed to establish a plain error in this regard.

Respondent also argues that the trial court's failure to refer him to the forensic center for an evaluation deprived him of his constitutional right to present an insanity defense. Again, we disagree. The test for criminal insanity is set forth in MCL 768.21a(1), which provides, in pertinent part:

> An individual is legally insane if, as a result of mental illness as defined in section 400a of the mental health code, . . . that person lacks substantial capacity either to appreciate the nature and quality or the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of the law. Mental illness . . . does not otherwise constitute a defense of legal insanity.

MCL 330.1400(g) defines "mental illness" as "a substantial disorder of thought or mood that significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life." "The defendant has the burden of proving the defense of insanity by a preponderance of the evidence." MCL 768.21a(3).

Respondent has not provided any affidavits from qualified medical personnel or other documentation indicating that he had any medical or psychological condition to reasonably support exploration of his sanity. Respondent relies on the diagnosis in the Clinic for Child Study report that he suffers from anxiety, hyperactivity, inattention, ADHD, impulsivity, and has

some cognitive delays. He further notes that he re-offended and did not complete the treatment program levels. But none of this evidence provides a basis for a diagnosis of criminal insanity. Indeed, respondent's therapist testified that respondent was able to conform his behavior to the law. She explained that respondent understands that sexual contact is inappropriate and has the mental capacity to understand that there are consequences to his wrongful behavior, but believes that his behavior will be excused. She further stated that respondent initially did well and went nine months to a year without sexually acting out, thereby indicating that he could conform his behavior to the law. She opined that his intelligence level and his behavior diagnosis did not affect his understanding of the consequences. In sum, although respondent may have certain mental health issues, mental illness alone does not constitute a defense of legal insanity, MCL 768.21a(1), and there is no evidence that respondent lacked the capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the law.

Lastly, respondent asserts that his plea is illusory because he is unable to complete the requirements of the treatment plan or comply with the sex offender registration requirements. We disagree. A criminal defendant may be entitled to withdraw a guilty plea if the bargain on which the plea was based was illusory, meaning that the defendant receives no benefit from the agreement. *Harris*, 224 Mich App at 132. Here, respondent was originally charged with first-degree CSC and second-degree CSC. By being permitted to enter a plea of admission to fourth-degree CSC, respondent received the independent benefit of being adjudicated guilty of a lesser offense and of having an additional count dismissed. In addition, there is no record support for respondent's claim that he has cognitive limitations that make it impossible for him to comply with either the treatment plan or the sexual offender registration requirements. Consequently, we conclude that the trial court did not err in accepting respondent's plea and respondent is not entitled to relief.

II. EFFECTIVE ASSISTANCE OF COUNSEL

In a related argument, respondent argues that defense counsel was ineffective for failing to raise the issue of his competency and for not having his competency evaluated at the forensic center before permitting him to enter the plea. We disagree. Because respondent failed to raise this issue in the trial court in connection with a motion for a new trial or request for an evidentiary hearing, this Court's review is limited to mistakes apparent on the record. *People v Ginther*, 390 Mich 436, 443; 212 NW2d 922 (1973); *People v Sabin (On Second Remand)*, 242 Mich App 656, 658-659; 620 NW2d 19 (2000).

Effective assistance of counsel is presumed and respondent bears a heavy burden of proving otherwise. *People v Effinger*, 212 Mich App 67, 69; 536 NW2d 809 (1995). To establish ineffective assistance of counsel, respondent must show that counsel's performance was below an objective standard of reasonableness under prevailing professional norms and that the representation so prejudiced respondent that there is a reasonable probability that, but for counsel's error, the result of the proceedings would have been different. *People v Pickens*, 446 Mich 298, 302-303; 521 NW2d 797 (1994).

A criminal defendant is entitled to have his counsel investigate, prepare, and present all substantial defenses. *In re Ayres*, 239 Mich App 8, 22; 608 NW2d 132 (1999). A criminal defendant is denied effective assistance of counsel by his attorney's failure to investigate and present a meritorious insanity defense. *People v Hunt*, 170 Mich App 1, 13; 427 NW2d 907

(1988). When a claim of ineffective assistance of counsel is based on the failure to present a defense, the defendant must show that he made a good-faith effort to avail himself of the right to present that defense and that the defense was substantial. *Ayres*, 239 Mich App at 22.

As discussed previously, there is no record support for respondent's claim that he had any medical or psychological condition to support referral for a forensic evaluation and exploration of an insanity defense. Defense counsel had the benefit of the Clinic for Child Study report and, as petitioner argues, it did not raise any "red flags" with respect to respondent's competency or sanity. Further, respondent did not assert any irregularity with the report that required defense counsel to seek additional medical testimony. In addition, respondent has not identified any evidence showing that during the years before the plea under advisement was accepted, facts were brought to defense counsel's attention that raised any uncertainty with respect to his competence and that defense counsel ignored or otherwise failed to act upon these facts. On this record, respondent has not overcome the presumption that defense counsel's representation was reasonable.

Affirmed.

/s/ Kathleen Jansen
/s/ Mark J. Cavanagh
/s/ Kirsten Frank Kelly